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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,209	08/20/2004	Yoshinobu Izawa	MAR 74 005	3694
35/290	7590	08/01/2008	EXAMINER	
DUANE MORRIS LLP			LIAUX, JESSICA L	
505 9th Street			ART UNIT	PAPER NUMBER
Suite 1000				3635
WASHINGTON, DC 20004-2166				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/505,209	<b>Applicant(s)</b> IZAWA, YOSHINOBU
	<b>Examiner</b> JESSICA LAUX	<b>Art Unit</b> 3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 April 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-6 is/are pending in the application.

4a) Of the above claim(s) 3 and 5 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-2, 4, 6 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application Paper No(s)/Mail Date _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Election/Restrictions***

Amended claims 3 and 5 are directed to a species that is independent or distinct from the species originally claimed (as best understood) for the following reasons: the species as originally claimed was drawn to a tank being horizontally divided where the divider is movable up and down. The species of claims 3 and 5 are distinct from this embodiment as they require vertical division or pillars with an inner and outer tank and are not divided horizontally.

Since applicant has received an action on the merits for the originally presented invention (as it was best understood at the time), this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 3 and 5 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Response to Arguments***

Applicant's arguments filed 4/23/08 have been fully considered but they are not persuasive. In response to applicant's argument that "...each chamber being filled with the same liquid, powder or grain", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In the instant case Usher is capable of having fill material in both chambers.

### ***Claim Objections***

Claim 6 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 6 recites the same intended use limitation as claim 1 from which it depends.

Claim 1 recites the limitation "the service tank" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-2, 4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Usher (1367900).**

Regarding claims 1, 6: Usher discloses a liquid, powder or grain feed tank, wherein the service tank is provided with a tank body to be filled with liquid, powder, or grain, the inside of the said tank body being divided into two chambers (upper and lower) with a separating wall (D), said separating wall being movable upward and downward to relatively increase and/or decrease the volumes of the two chambers, and each chamber being filled with the same liquid, powder, or grain (where the limitation of the tank being filled is an intended use that Usher is certainly capable of).

Regarding claim 2: The fluid, powder or grain feed tank of claim 1, wherein the inside of the said tank body is divided horizontally into an upper part and a lower part to form an upper chamber and a lower chamber with a separating wall that is movable upward and downward (figure 1).

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Regarding claim 4: The fluid, powder or grain feed tank of claim 1, wherein the separating wall is made of a multi-angular or round base plate (d) and a slidable sheet (D, where D slides up and down the cable), the said slidable sheet being fixed at one end on the periphery of the said base plate (where it is fixed via element e), and being fixed at the other end on the inside walls of the tank body (figure 1).

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSICA LAUX whose telephone number is (571)272-8228. The examiner can normally be reached on Monday thru Thursday, 9:00am to 5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeanette E Chapman/  
Primary Examiner, Art Unit 3633

/J. L./  
Examiner, Art Unit 3635